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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2740 OF 2004
IN
CRIMINAL APPEAL NO.580 OF 2004

1. Pramod @ Bala Ramesh Dhande,
and Anr.

...Applicants
(Original accused
No.2 and 3)

V/s

The State of Maharashtra
(at the instance of Sr.P.I.
Gamdevi Police Station,
Mumbai.)

...Respondent

Mr. K.S. Patil with Mr. Maheh Mule for the applicants.

Mr. A.M. Shringarpure, APP for the respondent - State.

CORAM: V.M.KANADE,J.

DATE: 8th October, 2004

PC:.

1. Heard the learned Counsel appearing on behalf of
the applicants and the learned APP for the respondent
- State.

2. Applicants are convicted by the Trial Court under
section 3(2) and 3(4) of the Maharashtra Control of
Organised Crime Act 1999 (For short "MCOCA") and
sentenced to suffer R.I. for five years. They are
acquitted of the offence punishable under section 302
read with section 120B of the Indian Penal Code. They

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are also acquitted of the offence punishable under section 3(1)(i) of the MCOC Act. A fine is also imposed on each of the applicants in the sum of Rs 5 lacs on each count. Thus total fine of Rs 10 lacs is imposed on both the applicants. The only evidence against these applicants is their own confession which is recorded under section 18(1) of the MCOC Act.

3. It is submitted by the learned Counsel appearing on behalf of the applicants that the provisions of section 18 of the MCOC Act and the rules framed thereunder have not been complied with and since the mandatory provisions of the said section and rules not being complied with, the said confessions cannot be relied upon by the prosecution. In any case, it will be difficult to rely on the said evidence for forming the basis of conviction under the provisions of MCOC Act.

4. I have perused the confessions which are recorded. One of the mandatory provisions of section 18 of the MCOC Act is that the accused should be informed that he is not bound to make any confession or statement and that if any such statement is made by him it can be used against him in evidence. Further, time should be given to the accused in order to consider whether

he wants to give such confession and for that purpose accused is kept in judicial custody and is not kept in the custody of the Investigating Officer. The perusal of the said confessions disclose that these precautions apparently are not taken while recording the confessions. Since the conviction is based primarily on these confessions which were later on retracted by the accused during trial and the fact that they are already in custody for last three and half years and have undergone more than 50% of the sentence, I am of the view that this is a fit case where applicants should be released on bail pending hearing and final disposal of the appeal. Further, the Trial Court also observed in para 33 of its judgment that the applicants were produced by their respective father before the Police. The father of accused No.2 is a Police Constable and the father of accused No.3 is a Mill Worker. Thus they are not likely to abscond as they have permanent places of residence in Thane. Though there is a restriction imposed on grant of bail under section 21(4) of the MCOC Act, I am of the view that the said restriction applies to cases pending trial and there is no specific provision in the MCOC Act restraining the Court from suspending the sentence awarded by the Trial Court. A similar provision is found in section

32A of the NDPS Act. Such similar provision is not there in the MCOC Act. Thus in the absence of any statutory restriction while considering the question of bail at the appellate stage, I do not see any reason why the applicants should not be released on bail. Applicants, therefore, are directed to be released on bail in the sum of Rs 10,000/- each with one or two sureties in the like amount. A fine of Rs 10 lacs is imposed on both the accused. It is submitted that the accused would not be in a position to pay the said amount of fine. Both the accused were of adolescent age when the said offence was committed. Under these circumstances, payment of fine is stayed. The applicants to report to Navpada Police Station once in a week, pending the hearing and final disposal of the appeal

V.M. KANADE, J.